

CALIFORNIA EMPLOYMENT  
LAW CORNER *By Jessica A. Braverman, Esq.*

## Handling Layoffs And Downsizing In A Tough Economy

*A survival resource guide for all companies, organizations, small businesses and employees.*

### **We Are Downsizing. What Do We Need To Know?**

Many businesses, organizations and corporations have already planned or are in the execution stages of downsizing to stay financially afloat during these troubled economic times. Employees struggle to locate other viable employment opportunities while trying to maintain housing, health benefits, and food for themselves and their families.

What employers, small businesses and employees need to know is that you have resources in Contra Costa County available to you free of charge.

### **For Employers Large And Small**

Employers with 100 or more employees planning to lay off at least 50 workers at a single site of employment, must file a WARN (worker adjustment retraining notification) notice with the State of California. (See WARN Act, public law 100-379 at 29 U.S.C. § 2101 et. seq.) The State then notifies the local Work Force board. In Contra Costa County that resource is Rapid Response through EASTBAY Works. The Rapid Response Coordinator will contact the employer to schedule an appointment to provide resources and links. For example, the Rapid Response Team can provide on-site presentations to laid off workers about Employment Development Department (EDD) services and outplacement services available through the EASTBAY Works One-Stop Career Centers.

Smaller companies and employers who do not have to file a WARN notice may still utilize free of charge the EASTBAY Works resources. In fact, all employers large and small can call the Rapid Response Coordinator, Susie O'Bryant, directly at (925) 671-4542. She is located at 4071 Port Chicago Hwy., Ste. 250, Concord, CA 94520.

EASTBAY Works provides job seekers with needed tools and solutions to assist them with job transition issues such as career planning, assessments, resume writing help and interviewing workshops. Further, EASTBAY Works can provide job listing, on site employer recruitment, computer workshops, links to training and funding sources and referrals to other services in the community. This free of charge resource enables job workers to re-enter the workforce.

EASTBAY Works One Stop Career Centers are located

throughout Contra Costa and Alameda Counties. Call 1-800-EBWORKS (329-6757) or visit the web site at [www.eastbayworks.com](http://www.eastbayworks.com) for locations and additional information.

### **What Other Resources Are Available In Contra Costa County For Both Employers And Employees During Downsizing?**

1. The Rapid Response Team can assist employees who are part of a downsizing on how to file for unemployment. Today, filing for unemployment is different than it was 10 years ago, as filing now takes place via the Internet or by telephone – not by standing in line in person at an Unemployment Office.
2. The website [www.caljobs.ca.gov](http://www.caljobs.ca.gov) enables job seekers to post resumes and allows employers to post job openings. This is a free of charge service helpful to both employers and employees. One can register on the website or call the Customer Support Desk at: 1-800-758-0398 (Monday through Friday 8 to 5).
3. Experience Unlimited is a service of the Employment Development Department or EDD that offers an array of free services for the professional and technical job seeker such as monthly workshops on a variety of topics. For example workshops focus on how to write a resume, interviewing techniques and negotiation strategies. EU meets at the Temple Isaiah in Lafayette. For more information about Experience Unlimited Contact Cathy Sargent of EDD at (925) 602-0166 or (925) 602-0869 or check out [www.euccca.org](http://www.euccca.org) for more information.
4. For veterans who are laid off and/or seek Job Placement assistance check out [www.edd.ca.gov](http://www.edd.ca.gov). According to the EDD website, The EDD gives veterans top-priority in job referrals and offers veterans access to phones, internet, printers and copy machines, among other resources.
5. For employees who have been laid off or severed from a company through no fault of their own, Unemployment benefits may be available to you. Go on line at [www.edd.ca.gov](http://www.edd.ca.gov) for more information.

### **What Else Can Employers And Employees Do During Downsizing And Layoffs?**

Layoffs, downsizing and severing employment relationships can be stressful for all involved. Employees appreciate as much advance notification as possible before being severed from a job. Besides complying with the WARN act, employers can consider setting up meetings with employees who will part of a downsizing to reassure them that they will be treated fairly.

Offer as much notice as possible If employers know that lay offs are needed, they might consider getting the message out early. Although this may pose other issues



such as morale for the rest of the work force, overall when the employer is perceived in handling downsizing in a humane and balanced way, getting the word out early can help smooth the transition for everyone involved.

**Severance Is Not Mandatory, But May Be A Good Option To Consider**

When advance notice is not possible, or even when it is, employers might consider offering severance packages that include paying for health care benefits for a period following the lay off. Severance agreements are also a good way for employers to avoid potential lawsuits, as normally severance agreements include a waiver of legal action as part of the terms of the agreement. Employers should follow their own handbooks and precedents for severance guidelines and should consult with their legal counsel. There are no strict laws about the amount of severance offered. Typically, severance is based on the worker’s length of service with the company.

There are some special laws when employees are asked to release age discrimination claims as part of the severance agreement. Review the Older Workers’ Benefit Protection Act (OWBPA) or talk with your attorney before including that waiver in any severance agreement.

**Non-Cash Considerations With Severance**

Employees should be aware that severance agreements are often negotiable and do not have to be limited only to monetary compensation. Think about medical/dental benefits, letters of reference, outplacement assistance, part-time consulting work with the company if available, and other non-cash benefits that will assist the employee transition into the next job opportunity.

**Think About Confidentiality/Proprietary Information Provisions With Severance**

When employers are forced to downsize more than one employee from a particular site, consider inserting confidentiality provisions into the severance agreements to prevent employees from “comparing” notes on their individual severance agreement. Thus, a provision to “not disclose the terms of the severance agreement” should be considered.

Additionally, employees typically have knowledge of their employers’ proprietary information including vendor and client lists. Consider inserting a provision into the severance agreement that includes “non disclosure of proprietary information” to keep severed employees from taking that information to their new employment. Employers might consider an enforcement provision including injunctive and monetary relief if they find this provision has been violated.

**Be Fair, Honest And Helpful To Employees Being Laid Off**

Layoffs, downsizing and severing from employment is stressful for all involved. Remember that hearing the news that you are losing your job can cause understandable emotional responses. Employers should be prepared to go the extra mile to create an atmosphere of good will, fairness and balance. This in turn will help keep the equilibrium of the entire work force within an organization.

Employers and employees should consult with legal counsel before implementing a downsizing or layoff, as there are particular issues unique to each employment setting. If all resources are utilized properly, both employers and employees should be able to navigate successfully through any severance situation. Being prepared, knowing your resources and having a plan will help employers and employees survive downsizing in this economy.



*For more information about Mediation, contact [Jessica@CAELTC.com](mailto:Jessica@CAELTC.com) or call the California Employment Law Training Center at (925) 827-4198, a San Ramon Chamber member. Jessica A. Braverman is a trained Mediator since 1995 and most recently was added to the Contra Costa County Superior Court ADR panel after completing an additional 42 hours of advanced mediation training in April 2008. Ms. Braverman owns Braverman Mediation and Consulting. See [www.BravermanSolutions.com](http://www.BravermanSolutions.com) for more information.*

**DISCLAIMER: This is a best practice/information column only and all readers should consult their legal counsel before relying on any of the information listed in this column.**

	
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<p><small>Onsite training sessions available. Training held at 3478 Buskirk Ave, Suite 1000 Pleasant Hill, CA 94523. Mail payment to 3478 Buskirk Ave, Suite 1000 Pleasant Hill, CA 94523, attention Jessica Braverman, Esq., include with check contact information (email/phone) for each attendee and course name. No Refunds.</small></p>	